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5 Attorney for Plaintiff
6 KENNETH W. CROSBY

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9 KENNETH W. CROSBY, an individual,

Case No. 2:18-cv-01554-GMN-(GWF)

10 Plaintiff,

11 vs.

PLAINTIFF KENNETH W. CROSBY'S
EX-PARTE MOTION FOR AN ORDER
EXTENDING TIME WITHIN WHICH TO
SERVE THE SUMMONS AND COMPLAINT
UPON DEFENDANTS;
and,
(PROPOSED) ORDER
(Fed. R. Civ. P., Rule 4(m))

12 CF MEDICAL, LLC, a Nevada limited liability
company; CF MEDICAL II, LLC, a Nevada
13 limited liability company; CF MEDICAL V,
LLC, a Nevada limited liability company; CF
14 MEDICAL VI, LLC, a Nevada limited liability
company; CA MEDICAL, LLC, a Nevada
15 limited liability company; CP MEDICAL, LLC,
a Nevada limited liability company; ACF
16 MEDICAL SERVICES SPECIAL FINANCE
UNIT, LLC,

17 Defendants.
18 _____/

19 Plaintiff, KENNETH W. CROSBY, by his attorney Steven J. Parsons, of LAW OFFICES OF
20 STEVEN J. PARSONS, seeks the Court's Order, *ex parte*, permitting the extension of time for an
21 additional ninety (90) days within which to seek the issuance of the Summonses by the Clerk
22 and thereafter, to serve the Summons and Complaint on Defendants, within Fed. R. Civ. P.,
23 Rule 4(m).

24 Plaintiff's Motion to Enlarge Time to comply with Fed. R. Civ. P., Rule 4 is upon the
25 following Memorandum of Points and Authorities, including the attached Declaration of Plaintiff

26 ...

27 ...

1 KENNETH W. CROSBY, incorporated herein as Exhibit 1.

2 Dated: November 15, 2018.

3 LAW OFFICES OF STEVEN J. PARSONS

4 /s/ Steven J. Parsons
5 STEVEN J. PARSONS
6 Nevada Bar No. 363

7 Attorney for Plaintiff
8 KENNETH W. CROSBY

9 CERTIFICATE OF SERVICE BY E-FILING

10 I hereby certify that service of the foregoing Plaintiff Kenneth W. Crosby's Ex-Parte
11 Motion for an Order Extending Time Within Which to Serve the Summons and Complaint upon
12 Defendants (Fed. R. Civ. P., Rule 4(m)) was made today by e-filing with the Court's PACER
13 system.

14 Dated: November 15, 2018.

15 /s/ Candice Benson
16 An Employee of LAW OFFICES OF STEVEN J. PARSONS

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1 (m) *Time Limit for Service*. If a defendant is not served within 90
2 days after the complaint is filed, the court—on motion or on its
3 own after notice to the plaintiff—must dismiss the action without
4 prejudice against that defendant or order that service be made
within a specified time. But if the plaintiff shows good cause for
the failure, the court must extend the time for service for an
appropriate period.

5 Plaintiff is unaware of and unable to see any efforts made by anyone in meeting that
6 deadline – no Summonses have been issued by the Clerk; no returns of service of process
7 have been filed; after filing the Complaint nothing has been done on his behalf in the case by
8 Mr. Crosby’s attorney or his firm.¹ Nothing was explained to Plaintiff regarding the tasks that
9 were left to Plaintiff to accomplish, in proper person.

10 Having never experienced what was to be done with the Complaint, Mr. Crosby simply
11 informed the Plan that the “papers had been filed in federal court” and awaited the Plan’s
12 response.

13 Thereafter, Plaintiff consulted with and retained Mr. Parsons on November 9, 2018.
14 Upon due diligence, Mr. Parsons and his staff found that the Complaint had been filed on
15 August 17, 2018. However, as nothing else regarding effort on Plaintiff’s behalf was set forth
16 in PACER, Mr. Parsons undertook to seek his substitution as Plaintiff’s counsel. Plaintiff’s
17 Motion to seek the Court’s permission to substitute Mr. Parsons as his Counsel was filed
18 November 13, 2018 (Docket No. 4). The Court denied Mr. Parsons’ Motion on November 14,
19 2018 (Docket No. 6). On November 14, 2018, Plaintiff’s counsel of record Edward D.
20 Boyack, of BOYACK ORME & ANTHONY, executed a Stipulation to Change counsel of record. The
21 Stipulation to change Mr. Crosby’s counsel of record to Mr. Parsons was filed November 15,
22 2018 (Docket No. 7).

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25 ¹Counsel filing the Complaint, Edward D. Boyack, of BOYACK ORME & ANTHONY told
26 Plaintiff that upon filing the Complaint that he was “withdrawing” as counsel for Mr. Crosby.
27 However, Mr. Boyack’s Motion to Withdraw was not filed, and Mr. Crosby insists he was not
informed by Mr. Boyack or anyone of “what else” must be done to comply with the Rules in
prosecuting his case.

1 2. HISTORY OF PLAINTIFF'S COMPLAINT

2 As the beneficiary of a large sum of funds he claims is still due him from the Plan, Mr.
3 Crosby has attempted to meet all of the requirements set out to him by the Administrator of
4 the Plan. Upon receiving notice of the initial denial of benefits from the Administrator, Mr.
5 Crosby – a lay person with a limited formal education – was told “(he) must file something in
6 federal court.” Mr. Crosby retained Edward D. Boyack, of BOYACK ORME & ANTHONY, his counsel
7 of record, to do so.

8 Mr. Crosby met with Mr. Boyack and explained his need of “filing something in federal
9 court” and provided Mr. Boyack the denial of benefits letter he had received from the
10 administrator of the Plan. Mr. Boyack agreed to represent Mr. Crosby, and assured him that
11 he would “file something in federal court.” Thereafter, merely a *draft* of a Complaint upon
12 which someone’s hand written notes appear was given to Mr. Crosby. Later, Mr. Boyack
13 assured Mr. Crosby that “the Complaint” had been filed in the United States District Court.²

14 Mr. Boyack informed Mr. Crosby that having filed the Complaint, he had “withdrawn”
15 as Mr. Crosby’s attorney. However, upon review of PACER on November 9, 2018, Mr. Boyack
16 remained as counsel of record for Mr. Crosby. Mr. Crosby also claims that nothing in writing
17 was provided by Mr. Boyack to him that outlines any proposed procedure to be taken – by
18 either of them – upon filing of the Complaint. Mr. Boyack did not seek Summonses to be
19 issued by the Clerk; Mr. Boyack did not make any effort to timely serve the various defendants;
20 and Mr. Crosby claims that Mr. Boyack didn’t explain in any manner to him the courses of
21 action Mr. Crosby needed to undertake as a lay person *on his own* to preserve his rights.

22 Nonetheless, Mr. Crosby, believing he had met the Plan’s requirement that he “file
23 something in federal court” told the Plan that he had done so. Beyond informing the Plan that
24 Mr. Boyack had filed what the Plan asked for, Plaintiff remained totally unaware of any steps

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26 ²In fact, on November 9, 2018 as part of incoming counsel’s due diligence,
27 investigation of PACER revealed that a Complaint initiated this case on August 17, 2018.
However, Mr. Crosby states that Mr. Boyack did not provide a filed-copy of the Complaint.

1 to be taken beyond the mere filing of the Complaint, and that those further tasks were
2 somehow left to him to accomplish.

3 Mr. Crosby first explained the history of this case to Steven J. Parsons in a consultation
4 late in the afternoon of October 30, 2018. Plaintiff sought counsel from Mr. Parsons, as the
5 Plan's administrator had *further* rebuffed his claim for benefits upon Mr. Crosby telling the
6 Plan's administrator that he "filed the papers in federal court" as the Plan had directed. After
7 minimal due diligence revealing the status of the case, Mr. Crosby retained Mr. Parsons after
8 close of business on Friday, November 9, 2018 to make certain his rights are preserved.

9 The first entry in this case in PACER is that the proof of service of process upon
10 Defendants in the case is due to be filed with the Clerk of the Court not later than November
11 15, 2018. Mr. Crosby and Mr. Parsons remain unaware of any effort by Mr. Boyack to meet
12 that deadline. For Mr. Parsons, as new counsel just entering the case, it was functionally
13 impossible to meet that requirement – having the Clerk issue Summonses, then serving the
14 Summonses and Complaint on all Defendants – in the two (2) judicial days before the
15 deadline. Therefore, the instant Motion results.

16 By his Motion, Plaintiff submits that he was totally unaware of his obligations to the
17 Court, let alone that the "papers filed in federal court" lay fallow without being addressed, with
18 the necessary effort of issuing Summonses and service upon Defendants not undertaken.

19 Plaintiff seeks the Order of the Court to allow for an additional ninety (90) days time
20 within which to have the Clerk issue Summonses for each Defendant, and the Summonses
21 and the Complaint be then served upon Defendants.

22 3. CONCLUSION

23 Plaintiff respectfully submits that good cause has been shown why relief of the nominal
24 deadlines of Fed. R. Civ. P., Rule 4 should be granted and additional time of ninety (90) days
25 be granted for service of the Summonses and Complaint on Defendants.

26 Without the relief he seeks in this Motion, Plaintiff risks catastrophe in the self-
27 executing operation of the Rule, which will impose a case-terminating sanction. Such a

1 dismissal is not just.

2 Dated: November 15, 2018.

3 LAW OFFICES OF STEVEN J. PARSONS

4 /s/ Steven J. Parsons
5 STEVEN J. PARSONS
6 Nevada Bar No. 363

7 Attorney for Plaintiff
8 KENNETH W. CROSBY

9 EXHIBIT 1

10 DECLARATION OF KENNETH W. CROSBY

11 KENNETH W. CROSBY, being first duly sworn under penalty of perjury, hereby deposes
12 and says:

13 I am Plaintiff in this case. I am of the age of majority, and I could and would
14 competently testify to the contents of this Declaration if called upon to do so.

15 I have read my foregoing Ex-Parte Motion for an Order Extending Time Within Which to
16 Serve the Summons and Complaint upon Defendants. I know the contents of the Motion, all
17 of which is true to my knowledge.

18 Executed under the penalties of perjury at Las Vegas, Clark County, Nevada, on
19 November 15, 2018.

/s/ Kenneth W. Crosby
KENNETH W. CROSBY

20 ORDER

21 Upon Plaintiff's forgoing Motion, and upon good cause shown,

22 IT IS HEREBY ORDERED that the time within which to issue the Summonses, then
23 serve the Summons and Complaints on Defendants, within Fed. R. Civ. P., Rule 4(m) is hereby
24 enlarged to and including February 14, 2019.

25 Dated: 11-16-2018

George Foley Jr.

UNITED STATES MAGISTRATE JUDGE